

## **§ 563b.515**

(3) Repurchases to fund management recognition plans that have been ratified by shareholders do not count toward the repurchase limitations in this section. Repurchases in the first year to fund such plans require prior written notification to OTS.

(4) Purchases to fund tax qualified employee stock benefit plans do not count toward the repurchase limitations in this section.

(b) After the first year, you may repurchase your shares, subject to all other applicable regulatory and supervisory restrictions and paragraph (c) of this section.

(c) All stock repurchases are subject to the following restrictions.

(1) You may not repurchase your shares if the repurchase will reduce your regulatory capital below the amount required for your liquidation account under § 563b.450. You must comply with the capital distribution requirements at part 563, subpart E of this chapter.

(2) The restrictions on share repurchases apply to a charitable organization under § 563b.550. You must aggregate purchases of shares by the charitable organization with your repurchases.

### **§ 563b.515 What information must I provide to OTS before I repurchase my shares?**

(a) To repurchase stock in the first year following conversion, other than repurchases under § 563b.510(a)(3) or (a)(4), you must file a written notice with the OTS. You must provide the following information:

(1) Your proposed repurchase program;

(2) The effect of the repurchases on your regulatory capital; and

(3) The purpose of the repurchases and, if applicable, an explanation of the extraordinary circumstances necessitating the repurchases.

(b) You must file your notice with your Regional Director, with a copy to the Applications Filing Room, at least ten days before you begin your repurchase program.

(c) You may not repurchase your shares if OTS objects to your repurchase program. OTS will not object to your repurchase program if:

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(1) Your repurchase program will not adversely affect your financial condition;

(2) You submit sufficient information to evaluate your proposed repurchases;

(3) You demonstrate extraordinary circumstances and a compelling and valid business purpose for the share repurchases; and

(4) Your repurchase program would not be contrary to other applicable regulations.

### **§ 563b.520 May I declare or pay dividends after I convert?**

You may declare or pay a dividend on your shares after you convert if:

(a) The dividend will not reduce your regulatory capital below the amount required for your liquidation account under § 563b.450;

(b) You comply with all capital requirements under part 567 of this chapter after you declare or pay dividends;

(c) You comply with the capital distribution requirements under part 563, subpart E, of this chapter; and

(d) You do not return any capital, other than ordinary dividends, to purchasers during the term of the business plan submitted with the conversion.

### **§ 563b.525 Who may acquire my shares after I convert?**

(a) For three years after you convert, no person may, directly or indirectly, acquire or offer to acquire the beneficial ownership of more than ten percent of any class of your equity securities without OTS's prior written approval. If a person violates this prohibition, you may not permit the person to vote shares in excess of ten percent, and may not count the shares in excess of ten percent in any shareholder vote.

(b) A person acquires beneficial ownership of more than ten percent of a class of shares when he or she holds any combination of your stock or revocable or irrevocable proxies under circumstances that give rise to a conclusive control determination or rebuttable control determination under §§ 574.4(a) and (b) of this chapter. OTS will presume that a person has acquired shares if the acquiror entered into a binding written agreement for the transfer of shares. For purposes of this section, an offer is made when it is

communicated. An offer does not include non-binding expressions of understanding or letters of intent regarding the terms of a potential acquisition.

(c) Notwithstanding the restrictions in this section:

(1) Paragraphs (a) and (b) of this section do not apply to any offer with a view toward public resale made exclusively to you, to the underwriters, or to a selling group acting on your behalf.

(2) Unless OTS objects in writing, any person may offer or announce an offer to acquire up to one percent of any class of shares. In computing the one percent limit, the person must include all of his or her acquisitions of the same class of shares during the prior 12 months.

(3) A corporation whose ownership is, or will be, substantially the same as your ownership may acquire or offer to acquire more than ten percent of your common stock, if it makes the offer or acquisition more than one year after you convert.

(4) One or more of your tax-qualified employee stock benefit plans may acquire your shares, if the plan or plans do not beneficially own more than 25 percent of any class of your shares in the aggregate.

(5) An acquiror does not have to file a separate application to obtain OTS approval under paragraph (a) of this section, if the acquiror files an application under part 574 of this chapter that specifically addresses the criteria listed under paragraph (d) of this section and you do not oppose the proposed acquisition.

(d) OTS may deny an application under paragraph (a) of this section if the proposed acquisition:

(1) Is contrary to the purposes of this part;

(2) Is manipulative or deceptive;

(3) Subverts the fairness of the conversion;

(4) Is likely to injure you;

(5) Is inconsistent with your plan to meet the credit and lending needs of your proposed market area;

(6) Otherwise violates laws or regulations; or

(7) Does not prudently deploy your conversion proceeds.

#### **§ 563b.530 What other requirements apply after I convert?**

After you convert, you must:

(a) Promptly register your shares under the Securities Exchange Act of 1934 (15 U.S.C. 78a-78jj, as amended). You may not deregister the shares for three years.

(b) Encourage and assist a market maker to establish and to maintain a market for your shares. A market maker for a security is a dealer who:

(1) Regularly publishes bona fide competitive bid and offer quotations for the security in a recognized inter-dealer quotation system;

(2) Furnishes bona fide competitive bid and offer quotations for the security on request; or

(3) May effect transactions for the security in reasonable quantities at quoted prices with other brokers or dealers.

(c) Use your best efforts to list your shares on a national or regional securities exchange or on the National Association of Securities Dealers Automated Quotation system.

(d) File all post-conversion reports that OTS requires.

#### **CONTRIBUTIONS TO CHARITABLE ORGANIZATIONS**

#### **§ 563b.550 May I donate conversion shares or conversion proceeds to a charitable organization?**

You may contribute some of your conversion shares or proceeds to a charitable organization if:

(a) Your plan of conversion provides for the proposed contribution;

(b) Your members approve the proposed contribution; and

(c) The IRS either has approved, or approves within two years after formation, the charitable organization as a tax-exempt charitable organization under the Internal Revenue Code.

#### **§ 563b.555 How do my members approve a charitable contribution?**

At the meeting to consider your conversion, your members must separately approve by at least a majority of the total eligible votes, a contribution of conversion shares or proceeds. If you are in mutual holding company form and adding a charitable contribution as